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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,416	08/28/2008	Keith Alan Crutcher	81599-004US0	2428

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EXAMINER	
LUKTON, DAVID	

ART UNIT	PAPER NUMBER
1654	

NOTIFICATION DATE	DELIVERY MODE
05/12/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)
	10/586,416	CRUTCHER, KEITH ALAN
	Examiner	Art Unit
	DAVID LUKTON	1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 March 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27 and 29-40* is/are pending in the application.

4a) Of the above claim(s) *16-26,28,30-34,36,37,39 and 40* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15,29,35 and 38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

Applicants' election of Group 1 is acknowledged (claims 1-24, 29, 35, 36, 38, 39).

Also acknowledged is the response to the "election of species" requirement:

a) G3, i.e., the composition comprises one and only one polypeptide, and at least one other non-peptide compound (or pharmaceutically acceptable vehicle) is present in the composition;

b) *Staphylococcus Pseudomonadales* is causing the infection in the elected method;

c) G5, i.e., the polypeptide that is present in the composition is of formula I;

d, e) in the elected method, the peptide is that of SEQ ID NO:7;

Applicants have traversed the restriction by arguing that a search for the claimed method will produce all references that disclose peptides falling within the scope of claim 1. However, applicants are not correct. Moreover, applicants had the option of claiming the peptides *per se*, and electing them. Applicants have chosen not to do this. Applicants have also argued, in connection with PCT/GB/00769, that one examiner is bound by the decisions and findings of another. However, this is also not true. As for the Group 5 claims, there may be some merit to applicants' argument, provided that some version of Group 1 is found to be allowable. In the event that a set of claims within Group 1 is found to be allowable, it may become appropriate to revisit the matter of restriction between Group 1 and Group 5, provided also that whatever limitations on the genus of peptides that have been introduced into Group 1 are

also introduced into Group 5. It should be noted, however, that it is the view of the examiner that the Group 5 claims are not enabled, because of the presence of the term "preventing". The restriction is maintained at the present time.

Claims 25, 26, 28, 30-34, 37, 40 are withdrawn pursuant to the restriction; claims 16-24, 36, 39 are withdrawn pursuant to the species elections. Claims 1-15, 29, 35, 38 are examined in this Office action.

✦

Claims 10, 11, 12, 14 are objected to. In line 2 of claim 10, within the phrase "SEQ ID NO.1", a colon should be present, rather than a period, i.e., **SEQ ID NO:1**. See also claims 11, 12 and 14.

✦

Claims 1-15, 29, 35, 38 are rejected under 35 U.S.C. §112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is drawn to a method of using a composition. That composition is said to comprise a peptide. A "composition" must contain two or more compounds, otherwise it is a compound. Thus, the claim is mandating the presence of a second compound, yet is providing no clues as to what it might be. Is it a carrier? Is it another peptide?

✦

The following is a quotation of 35 USC §103 which forms the basis for all obviousness rejections set forth in the Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.
>
> This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made, absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103.

Claims 1-4 are rejected under 35 U.S.C. §103 as being unpatentable over Azuma, M. (*Peptides* **21**(3), 327-330, 2000) or Motizuki, Mitsuyoshi (*Biochemical Journal* **342**(1), 215-221, 1999).

Each of the cited references discloses that peptides derived from an apolipoprotein exhibit antibacterial activity.

Thus, the claims are rendered obvious.

✦

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached at (571)272-0562. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

/David Lukton/

Primary Examiner, Art Unit 1654